

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DANTAO SU,

CASE NO. 5:10-cv-04194 EJD

Plaintiff(s),

**ORDER DENYING IN FORMA PAUPERIS
STATUS ON APPEAL**

v.

DEFENSE LANGUAGE INSTITUTE
FOREIGN LANGUAGE CENTER, et. al.,

[Docket Item No(s). 48]

Defendant(s).

On October 16, 2012, this court dismissed Plaintiff Dantao Su's ("Plaintiff") complaint without prejudice pursuant to Federal Rule of Civil Procedure 4(m) after Plaintiff failed to provide Summons forms as directed and in turn failed to effectuate service within the time provided by the Rule. See Docket Item Nos. 45. Plaintiff has appealed from that order (see Docket Item No. 46), and the Court of Appeals has requested that this court determine whether Plaintiff should retain *in forma pauperis* status on appeal.


"An appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). This section is generally construed to mean that an appeal must not be frivolous. See, e.g., Coppedge v. United States, 369 U.S. 438, 445 (1962) (holding that the term "'good faith' . . . must be judged by an objective standard" and is demonstrated when appellant seeks review "of any issue not frivolous."); Ellis v. United States, 356 U.S. 674, 674 (1958) ("In the absence of some evident improper motive, the applicant's good faith is

1 established by the presentation of any issue that is not plainly frivolous.”); Hooker v. American
2 Airlines, 302 F.3d 1091, 1092 (9th Cir. 2002) (“If at least one issue or claim is found to be
3 non-frivolous, leave to proceed in forma pauperis on appeal must be granted for the case as a
4 whole.”).

5 Having reviewed this matter, the court concludes there are no valid grounds on which to base
6 an appeal. Accordingly, the court certifies that Plaintiff’s appeal is not taken in good faith pursuant
7 to 28 U.S.C. § 1915(a)(3) and denies *in forma pauperis* status for the current appellate proceedings.

8 **IT IS SO ORDERED.**

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10 Dated: November 20, 2012


EDWARD J. DAVILA
United States District Judge